

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GRANTING HANDS LLC,

Plaintiff,

v.

**RAD EXOTICS LLC, JUSTIN
SPENCER, and DAVID SIGLER,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. **3:23-cv-02408-L**

ORDER

The Findings, Conclusions, and Recommendation of the United States Magistrate Judge Rebecca Rutherford (“Report”) (Doc. 53) was entered on July 31, 2024, recommending that the court **grant** Defendant Justin Spencer’s (“Mr.Spencer”) Motion to Dismiss pursuant to Federal Rule of Civil Procedure 9(b) and 12(b)(6) (Doc. 30) in part and allow Plaintiff to amend its complaint.

Plaintiff filed this case on October 6, 2023, in the 193rd Judicial District Court of Dallas County, Texas. (Doc. 2) Plaintiff alleged claims against Defendants for (1) breach of contract; (2) conversion; (3) fraudulent conveyance; (4) declaratory judgment; (5) fraud; (6) concerted action to commit conversion and conspiracy to defraud; (7) restitution; and (8) accounting. *See* Am. Compl. On October 10, 2023, Plaintiff served Mr. Spencer (Doc. 1). Before Plaintiff served RAD Exotics and Mr. Sigler, Mr. Spencer removed this action to federal court on October 30, 2023 (Doc. 1).

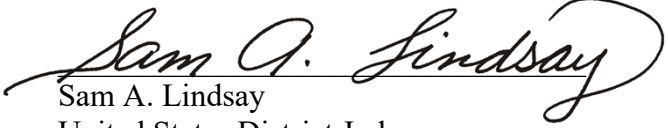
Defendant filed the pending Motion to Dismiss on January 25, 2024 (Doc. 30). Mr. Spencer argues that Plaintiff has failed to allege facts sufficient to state a claim that he is personally liable

for any amounts owing on the loan (Doc. 30). Mr. Spencer argues that Plaintiff has not alleged that he is a party to the loan documents and that he executed a personal guarantee (Doc. 30). Regarding Plaintiff's alter ego theory, Mr. Spencer argues that Plaintiff has failed to allege facts to show misconduct necessary to pierce RAD Exotics' corporate veil (Doc. 30). Mr. Spencer further contends that Plaintiff's pleadings fail the heightened requirement for fraud under Federal Rule of Civil Procedure 9(b) (Doc. 30). Plaintiff filed a response, and Mr. Spencer filed a reply.

The magistrate judge found that Plaintiff plausibly alleges a breach of contract claim against Defendant (Doc. 53). The magistrate judge also determined that Plaintiff failed to plausibly allege claims for fraud, fraudulent conveyance, civil conspiracy, concerted action to commit conversion, declaratory judgment, restitution, unjust enrichment, and an accounting (Doc. 53). The magistrate judge further determined that Plaintiffs request for declaratory judgment should be rejected as duplicative.

Having considered the Complaint, Motion, Report, file, record, and relevant law, the court determines that the magistrate judge's findings and conclusions in the Report are correct and **accepts** them as those of the court. Accordingly, the court **grants** Defendant's Motion to Dismiss and **dismisses without prejudice** Plaintiff's claims for fraud, fraudulent conveyance, civil conspiracy, concerted action to commit conversion, declaratory judgment, restitution, unjust enrichment, and an accounting pursuant to Rule 12(b)(6) (Doc. 30.) The court, however, **grants** Plaintiff leave to **file** an amended pleading correcting the deficiencies identified by Magistrate Judge Rutherford by **September 12, 2024**. After the amended pleading is filed, no further amendments will be allowed as to whether a claim has been stated.

It is so ordered this 29th day of August, 2024.


Sam A. Lindsay
United States District Judge